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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

STATE OF OREGON, ex rel. ELLEN F.  
ROSENBLUM, Attorney General for the State  
of Oregon, and PATRICK M. ALLEN,  
Director of the Oregon Department of  
Consumer and Business Services,

Plaintiff,

v.

SWIFT ROCK FINANCIAL, INC., d/b/a  
World Law Direct, World Law Group, World  
Law Plan, World Law Debt Settlement, World  
Law Debt Services, World Law Options, and  
World Law Debt Assistance, a Texas  
corporation; and

ORION PROCESSING, LLC, d/b/a World  
Law Processing and WLD Credit Repair, a  
Texas limited liability company,

Defendants.

Case No. 13-CV-01352-MO

PLAINTIFF STATE OF OREGON'S  
UNOPPOSED MOTION FOR REMAND

**CERTIFICATION PURSUANT TO LOCAL RULE 7-1(a)**

The undersigned counsel for plaintiff certifies that he conferred with Philip Van Der Weele, counsel of record for defendant Orion Processing, LLC ("Orion"), and that Orion does not oppose this motion for remand. The other defendant, Swift Rock Financial, Inc. ("Swift Rock") consented to removal but has not filed an appearance, and plaintiff is unaware of its position on this motion.

**MOTION**

Pursuant to 28 U.S.C. § 1447(c), the State moves the Court to remand this case to Multnomah County Circuit Court. The State does not seek attorney fees in connection with this motion to remand.

**MEMORANDUM IN SUPPORT**

The Complaint in this case alleges that defendants violated the Unlawful Trade Practices Act (UTPA), Or. Rev. Stat. §§ 646.605–646.656, the Debt Management Service Providers Act (DMSP Act), Or. Rev. Stat. §§ 697.602–697.842, and that defendants engaged in acts of financial abuse of vulnerable persons, in violation of Or. Rev. Stat. § 124.125.

Orion removed this case from the Circuit Court of the State of Oregon for the County of Multnomah on August 6, 2013, asserting that it was entitled to removal based on diversity jurisdiction under 28 U.S.C. §1332. No other bases for federal jurisdiction were asserted.

After meet and conferral, Orion agreed not to oppose this remand motion, and the State agreed not to seek attorney fees in connection with a remand motion.

Federal courts are courts of limited jurisdiction. A defendant may remove an action that was originally filed in state court only if the action could have been filed in federal court originally. 28 U.S.C. § 1441(a) (2012). As the proponent of federal jurisdiction, the defendant bears the burden of establishing that federal jurisdiction is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

The State's position is that the State is the only real party in interest in this action. Orion has agreed not to oppose this position of the State in this remand motion.

Given the now-uncontested proposition that the State is the only real party in interest in this action, it follows diversity jurisdiction does not exist. Swift Rock is a Texas corporation and Orion is a Texas limited liability company. Complaint, ¶¶ 3,5. States are not "citizens" for purposes of diversity jurisdiction, *Postal Tel. Cable Co. v. State of Alabama*, 155 U.S. 482, 487 (1894), and there is no diversity jurisdiction if the State is the "real and substantial party in interest," *Oregon ex rel. Roberts v. Mushroom King, Inc.*, 77 B.R. 813, 816 (D. Or. 1987).

The Attorney General and the Director of the Department of Consumer and Business Services are also named in the complaint on behalf of the State. Complaint, ¶¶ 1,2. However, in determining whether diversity jurisdiction exists, the Court must look beyond the named parties and consider the citizenship of the real parties in interest. *Navarro Savings Ass'n v. Lee*, 446 U.S. 458, 461 (1980). An "arm or alter ego" of the State is not a citizen for diversity purposes. *Moor v. County of Alameda*, 411 U.S. 693, 717 (1973).

Although they are named in the Complaint, the Attorney General and Director are acting in their official capacities and are merely "arms and alter egos" of the State. Or. Rev. Stat. § 646.632 authorizes a prosecuting attorney to enforce the UTPA "in the name of the State of Oregon." Similarly, Or. Rev. Stat. § 697.762 authorizes the Director to bring an action "in the name of the State of Oregon" to enjoin suspected violations of the DMSP Act. The Complaint plainly states that the Attorney General and Director are suing defendants in their official capacities under Or. Rev. Stat. §§ 646.632 and 697.762. Complaint, ¶ 1,2. The Attorney General and Director have brought this action on behalf of the State, and therefore, are acting as its alter ego; they are not citizens for diversity purposes. See *Harvey v. Blockbuster, Inc.*, 384 F. Supp. 2d 749, 755-56 (D. N.J. 2005) (remanding for lack of diversity jurisdiction where Attorney General was suing under state consumer protection law); *Kansas ex rel. Stovall v. Home Cable*,

*Inc.*, 35 F. Supp. 2d 783, 785-86 (D. Kan. 1998) (same). Accordingly, remand is proper because the Court does not have original jurisdiction in this action.

### **CONCLUSION**

For the reasons explained, the State respectfully asks the Court to remand to the Circuit Court of the State of Oregon for the County of Multnomah.

Respectfully submitted,

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Attorney General

s/Jermaine F. Brown  
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Assistant Attorney General  
Department of Justice

Of Attorneys for Plaintiff State of Oregon

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2013, a true copy of the foregoing PLAINTIFF  
STATE OF OREGON's UNOPPOSED MOTION FOR REMAND was served on the following  
persons as indicated below:

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(Via the Court's ECF Notification System)

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Austin, TX 78759

(Via First Class Mail)

Dated this 17th day of September, 2013.

s/Jermaine F. Brown  
Jermaine F. Brown

CERTIFICATE OF SERVICE

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